

THE EFFECTIVE DATE OF THIS ORDINANCE IS JUNE 23, 2005

ORDINANCE NO. 05-14-375

OPINION, FINDINGS AND ORDINANCE
OF
BOARD OF COUNTY COMMISSIONERS
OF
FREDERICK COUNTY, MARYLAND

RE: APPLICATION OF LAMBETH LEVEL LIMITED
PARTNERSHIP, HUFFER, LLC, ET AL

REZONING CASE NO. R-05-01

OPINION/FINDINGS

Lambeth Level Limited Partnership, Huffer, LLC, et al. filed this application to change the zoning classification of 173± acres of land from the Office Research Industrial (ORI) Zone to the Mixed Use Development (MXD) Floating Zone, all as more fully described in the record. This property is located on the southeast side of Maryland Route 180 (Jefferson Pike); on the northwest side of U.S. Route 340/U.S. Route 15 south of Interstate 70 in the Frederick Planning Region.

The staff of the Frederick County Planning Commission recommended approval of this request; concurred with the Applicants' proffer of eight (8) conditions; and recommended an additional four (4) conditions. The Planning Commission recommended approval of the request with the twelve conditions mentioned in the Staff Report as well as two (2) additional conditions.

Based on all the evidence submitted in this case, the Board makes the following specific findings of fact (in addition to the findings above) on each of the matters mentioned in Md. Code Ann., Art. 66B, § 4.05(a):

1. **POPULATION CHANGE:** The Applicant has proposed 825 residential dwelling units in this Mixed Use (MXD) with a residential component. This proposal would add approximately 2,000 people to the population.

2. **AVAILABILITY OF PUBLIC FACILITIES**

- A. **SCHOOLS**

As of December 31, 2004 Orchard Grove Elementary School is at 92% capacity, Crestwood Middle School is at 90% capacity and Frederick High School is at 89% capacity. The pupil yield from the residential units would be approximately 70 elementary, 30 middle school and 25 high school students. This pupil yield is based on 577 multi-family units (70% of the total 825 units) and 248 townhouse units (30% of the total 825 units) and uses the pupil yield factors for the schools serving the site.

- B. **FIRE AND RESCUE SERVICES**

The site is served by United Fire Company located in downtown Frederick approximately 2.7 miles west of the site. This is beyond the 1.5 mile recommended distance from an engine company for multi-story residential, hotel and industrial uses. Citizen's Truck Company, also located in downtown Frederick has ladder trucks capable of fighting fire in high-rise buildings. The Westview Fire Station site, on New Design Road, is approximately 3 miles from the site. United Fire Company also provides rescue and ambulance services.

- C. **POLICE SERVICE**

The Frederick County Sheriff's Office and the Maryland State Police provide police protection.

D. PARKS AND RECREATION FACILITIES

The proposed MXD will offer 31 acres of private open space with recreational amenities including a trail system, park, tot lots, public "greens" and two clubhouses. The County's Ballenger Creek Community Park is located across US 340 from this site.

E. LIBRARIES

The County headquarters library is located in downtown Frederick approximately 3 miles from the site.

F. WATER AND SEWER

The site is classified W-4 Dev./S-4 Dev. (service in 4 – 6 years) in the County's Master Water & Sewerage Plan. Sewage is proposed to be conveyed under U.S. 340/U.S. 15 into the Upper Pike Branch Interceptor and also the Ballenger Interceptor Phase 2 for treatment at the Ballenger Creek Wastewater Treatment Plant or the McKinney Wastewater Treatment Plant. Both of these interceptors are developer funded. Treatment capacity exists or is planned. Water capacity will rely on the Potomac water source and the New Design Treatment Plant upgrade project. The project relies on the completion of the Ballenger Zone 2 Water Storage Tank which will be located at the end of Fair Oaks Drive abutting the site. An alternative looping water main connecting the City, Ft. Detrick and County facilities is also being studied which might eliminate the need for the storage tank at this location.

G. SUMMARY

Public facilities are or will be available to serve the proposed development.

3. PRESENT AND FUTURE TRANSPORTATION PATTERNS:

This property has 822 feet of frontage along Maryland 180 which is designated a minor arterial (80 ft. right-of-way). The Frederick Region Plan also identifies an extension of Crestwood Blvd. as a minor arterial from Ballenger Creek Pike with an overpass crossing U.S. 340 through this site to Maryland 180. To the west of Maryland 180 this extension would continue as a collector road along Interstate 70 to Mt. Philip Road. 2003 traffic counts are: MD

180 (south of I-70) 4,175 vehicles per day; I-70 – 67,175 vehicles per day; U.S. 340/15 – 54, 875 vehicles per day. The applicant proposes two access points on MD 180 in addition to constructing a full movement grade-separated interchange with U.S. 340. This interchange will connect with proposed internal streets in the MXD and will be located opposite the County water tank on the southeast side of U.S. 340. Though this interchange will not provide for street connection to Ballenger Creek Pike, it would provide an opportunity for pedestrian access across U.S. 340. This MXD proposes a Traditional Neighborhood grid street system to provide a wide variety of travel options within the project and to encourage pedestrian movement. Through traffic from the highway access is discouraged. The MXD also proposes several street stubs at the property lines to facilitate street connections with the adjoining ORI properties. Facilitation of future public transit will be encouraged in the internal street network. The proposed interchange with U.S. 340 will minimize the impact of this project on MD 180 and the Butterfly Lane/Solarex Court area. The Applicants proposed bridge and access ramps to U.S. 340/U.S. 15 will achieve the access needed to facilitate the employment development envisioned by the Frederick Region Plan. The grid street network and pedestrian access meets the objectives of the MXD to foster a pedestrian friendly environment. The design concept of locating buildings at the streets and using alleys in the residential areas allows for an attractive streetscape, encourages walking and biking and allows for bus transit.

4. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA.

The site is actively farmed with row crops predominating. The farm house, barn and outbuildings are located approximately 800 feet from MD 180. An existing barn and outbuilding is located at the northeastern corner on Parcel 109. Adjoining land uses include several residences along MD 180 and a small subdivision where MD 180 crosses I-70, agricultural land, a cellular tower and a small manufacturing building. Adjacent to the west is more land actively farmed. Immediately east of the site across I-70 on MD 180 is the Seventh Day Adventist Church School and Nursing Home, the Missionary Baptist Church and several single family residences. In the neighborhood, south of U.S. 340/U.S. 15 is the Hannover PUD, Ballenger Creek Meadows PUD and Stuart Mechanic subdivision. A County one million gallon water storage tank occupies high

ground at the point where the proposed access ramps and bridge cross the highway. East of the I-70/U.S. 340 interchanges is an industrial park containing small office buildings, Solarex and Medimmune. North of I-70 is the proposed Hargett PND (696 residential units, an elementary school site and a small commercial center all located in Frederick City). The proposed MXD is compatible with existing and proposed development.

5. **RECOMMENDATION OF THE FREDERICK COUNTY PLANNING COMMISSION:** The Frederick County Planning Commission recommended approval of the MXD Floating Zone with fourteen conditions.
6. **RELATIONSHIP WITH THE FREDERICK COUNTY COMPREHENSIVE PLAN:** The Frederick Region Plan, adopted in 2002, designates this site Office/Research/Industrial (ORI). The entire ORI employment area between U.S. 340 and I-70 totals approximately 495 acres. This site is within a priority funding area. The Frederick County Code, § 1-19-324(B) specifically provides that the MXD district shall be located only in areas designated Office/Research or Limited Industrial on the Frederick County Comprehensive Plan. This request for MXD zoning is consistent with the Office/Research/Industrial designation on the Frederick Region Plan.

Based on all the evidence submitted in this matter, the Board of County Commissioners determines that this project concept is both feasible and desirable. The Board determines that the MXD district satisfies the objectives and requirements set forth in subsections A through G of Frederick County Code § 1-19-324 with the conditions below. This proposed MXD satisfies the purposes and objectives of the MXD district. This proposed MXD allows for the introduction of a mixture of uses in an integrated manner while encouraging an efficient use of the land. This proposal also creates an environment that ensures the integration and compatibility of the project with existing and proposed surrounding development

while acting as a focal point for the area. This proposal also creates appropriate open spaces, civic buildings and architectural treatments that act as landmarks, symbols and activity centers that provide a strong sense of identity and uniqueness. This proposal fosters a pedestrian friendly environment by the development of a comprehensive non-vehicular circulation network that links residential, commercial and employment areas as well as open spaces, public facilities and recreation areas. This proposal allows for development and design flexibility. This proposal preserves and integrates into the project existing structures or features on the site which are eligible to be placed in the national register of historic places or other recognized historic site inventory. This project, with the conditions below accommodates mass transit services which exist or are planned in the vicinity of the MXD site.

This site has a classification of at least W4/S4 on the County Water and Sewerage Plan and this site is consistent with the “community concept” of development as described in the County Comprehensive Plan. This property is located adjacent to existing or planned arterial roads that are or will be adequate to service the proposed development. This proposed site is feasible for the MXD district and satisfies the MXD purpose, objectives and standards. The proposed MXD with conditions, is compatible with the existing uses in the neighborhood and with the proposed uses for the neighborhood as shown on the County Comprehensive Plan.

The Maximum Permitted Land Use Mix percentage for the commercial and residential components shall be 39% of the gross project acreage (or 67.34 acres).

The proposed MXD floating zone classification will be granted subject to the conditions stated below.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, Rezoning Case No. R-05-01 is hereby **GRANTED** for the reclassification of 173 acres of land, more or less (as delineated in the record), from the Office/Research/Industrial (ORI) zone to the Mixed Use Development (MXD) Floating Zone, subject to the following conditions¹:

1. The developer shall be limited to record final plats for up to 200 residential units in any calendar year.
2. The project shall contain a maximum of 825 residential dwelling units.
3. The developer shall construct an overpass from the project across U.S. 340/15 including the westbound off ramp to the overpass and the eastbound ramp from the overpass onto U.S. 340/15 as Phase 1 Project Improvements. The developer shall be permitted to record final plats for up to 200 residential units and record plats for 2 or more employment buildings containing up to 200,000 square

¹ The term "developer" as used in the conditions of this Ordinance includes all present and future owners and developers of this property specifically including all heirs, successors and assigns (as may be applicable). These conditions run with the land.

feet at such time as the Developer has designed and guaranteed the improvements set forth in this paragraph and the Planning Commission has reviewed and approved these improvements set forth in this paragraph. No building permits may be issued until these road improvements are under construction and within 12 months of the estimated completion date and notwithstanding other improvements that may be required per the APFO approval.

4. The developer shall guarantee and construct the westbound ramp from the overpass and the eastbound ramp to the overpass as Phase 2 Project Improvements.

5. No free-standing single user commercial retail building will exceed a 20,000 square foot floor plate.

6. Architectural and streetscape guidelines for the project shall be approved by the Planning Commission prior to final plat recordation.

7. The project shall include at least 2 miles of trails and a series of exercise stations. The developer shall construct a residential area clubhouse and a pool, prior to obtaining building permits for more than 400 dwelling units. The developer shall construct a corporate clubhouse/recreation area prior to obtaining any building permits for employment uses that amount to more than 675,000 square feet for the entire project.

8. The developer shall construct all road improvements as stated in Conditions 3 and 4 as well as other road improvements required by APFO testing with other than County funds. Notwithstanding this condition, the Board of

County Commissioners may authorize Tax Increment Financing for these road improvements.

9. During the Phase II MXD approval, the developer shall work with staff to identify a 3 acre site in an area to adjoin other undeveloped properties in the ORI employment area and shall dedicate this site to the County prior to the recording of the first plat within the project. This site may be used for active recreation, a fire/rescue station or other public use as identified by the County.

10. As part of the Phase II MXD approval the developer shall work with staff to identify and incorporate appropriate design elements into the project to ensure the development is transit serviceable.

11. During the Phase II MXD approval the developer shall consider adaptive reuse of the farmstead structures either at their existing locations or relocating them elsewhere on the property. At a minimum, the structures should be documented prior to demolition or relocation.

12. The Developer shall work with staff during the Phase II MXD approval to determine the final location for public/quasi-public spaces as well as the commercial land uses, in order to link the larger ORI employment area with the Mixed Use Main Street and Commercial Core.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD, that the Zoning Administrator is hereby authorized and directed to make the appropriate change on the Zoning Map showing this reclassification, with conditions, as indicated above.

The undersigned hereby certify that this Ordinance was approved and adopted
on the 23rd day of June, 2005.

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

By: Michael L. Cady
Michael L. Cady, Vice President

John R. Lovell, Jr.
John R. Lovell, Jr.

ATTEST:

Douglas D. Browning
Douglas D. Browning
County Manager

Bruce L. Reeder
Bruce L. Reeder
JRM

Commissioners John L. Thompson, Jr. and Jan H. Gardner voted against the
proposed MXD Floating Zone classification.